



FILED

08-06-07

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Assess and
Revise the Regulation of
Telecommunications Utilities.

Rulemaking 05-04-005
(Filed April 7, 2005)

Rulemaking for the Purposes of Revising
General Order 96-A Regarding Informal
Filings at the Commission.

Rulemaking 98-07-038
(Filed July 23, 1998)

**ASSIGNED COMMISSIONER'S RULING ON HEARINGS
REGARDING AT&T ADVICE LETTERS AND EX PARTE BAN**

Introduction

Today's Ruling addresses a request for evidentiary hearings in this proceeding with regard to Pacific Bell Telephone Company's (d/b/a AT&T California, or AT&T) Advice Letters 28800 and 28982 (Rule 12 Advice Letters) that were filed last September and October 2006, in reliance on Ordering Paragraph 21 of Decision (D.) 06-08-030 (URF Phase I decision). The Utility Reform Network (TURN) has argued that evidentiary hearings are required to address unresolved issues pertaining to AT&T's Rule 12 Advice Letters. By this ruling, we grant TURN's request for evidentiary hearings. We will also establish an ex parte ban on all communications regarding the AT&T Advice Letters and Ordering Paragraph 21.

Before setting a schedule for hearings, we seek additional information on certain issues from parties. Parties should file comments seven days from the date that this Ruling is mailed. Reply comments will not be permitted.

Background

The URF Phase I decision adopted by the Commission in this proceeding on August 24, 2006 sought, to the extent possible, to establish a uniform set of rules for AT&T, Verizon, SureWest, and Frontier consistent with the regulations that apply to other carriers. It found that there were competitive alternatives available to consumers in the service territories of these incumbent local exchange carriers (ILECs) and eliminated price regulation for most telecommunications services with the exception of basic residential service. The URF Phase I decision further articulated a goal to eliminate certain regulations that were asymmetrical and created uneven obligations among the four largest ILECs, competitive local exchange carriers (CLECs) and interexchange carriers (IECs or IXC). In particular, Ordering Paragraph 21 of the URF Phase I decision stated that “[w]ith the exception of conditions relating to basic residential rates, all asymmetric requirements concerning marketing, disclosure, or administrative processes shall be eliminated.”

On September 11, 2006, in reliance on Ordering Paragraph 21, AT&T filed Advice Letter 28800, which removed much of the disclosure and marketing language in its Rule 12 tariff. AT&T asserted that these disclosure provisions were asymmetrical obligations of the type designated for elimination by Ordering Paragraph 21. The Commission had ordered AT&T to file these Rule 12 disclosure provisions to correct and remedy its marketing abuses found in D.01-09-058, a complaint proceeding (C.98-04-004). DRA, TURN, the Utility Consumers’ Action Network (UCAN), Latino Issues Forum (LIF), and Centro La Familia filed protests to the advice letter. Among other things, the protestants alleged that the advice letter was an improper procedural attempt to modify the underlying enforcement decision, that there was no notice in D.06-08-030 that the

Commission intended to modify D.01-09-058, and that the advice letter was inconsistent with the Commission's policies (especially General Order 168).¹ AT&T responded that Advice Letter 28800 is consistent with the URF Phase I decision, that DRA/UCAN misrepresented the tariff changes made by Advice Letter 28800, and that AT&T has retained disclosure requirements that apply to all carriers in its Rule 12 Tariff.²

Subsequently, AT&T filed Advice Letter 28982, which added back some, but not all, of the preexisting disclosure language to Rule 12 of its tariffs. DRA and TURN then filed protests to Advice Letter 28982.³ In response to these protests, the Commission issued Resolution No. L-339 in November 2006, which kept both of AT&T's Rule 12 Advice Letters in effect, pending resolution of the issues raised by the protests in this docket.⁴

In December 2006, I issued an Assigned Commissioner's Ruling and Revised Scoping Memo (December 21, 2006) that sought comment from parties in Phase II of this docket on various issues, including the issues raised by the protests to the AT&T advice letters.⁵

¹ See *e.g.*, DRA protest to AT&T Advice Letter 28800 (October 2, 2006).; UCAN Protest to AT&T Advice Letter 28982 (October 2, 2006).

² AT&T Reply to Protests (October 10, 2006).

³ See DRA/TURN protest to AT&T Advice Letter 28982 (November 3, 2006).

⁴ This Resolution was served on all protestants to the advice letters, the service list to the URF proceeding, and the parties to the underlying enforcement/complaint case C.98-04-004.

⁵ The December 21, 2006 Ruling and Revised Scoping Memo was also served on the same parties as Resolution No. L-339. On January 3, 2007, DRA and TURN filed an application for rehearing of Resolution No. L-339.

AT&T, TURN, and DRA filed comments on the issues raised by protests to the AT&T Rule 12 Advice Letters.⁶ AT&T argues in its comments that the protests against its advice letters make unfounded allegations, including claims that “consumers, especially low income, elderly, and limited English proficiency customers will be at risk” with the removal of certain disclosure requirements in Rule 12. AT&T asserts that these allegations are “at odds with the overarching Commission policy to level the playing field in telecommunications regulation, and they represent a refusal to recognize that AT&T California no longer has market power and that consumers have choice.”⁷

In its Phase II comments, DRA reiterates its protest that the advice letter filings are procedurally improper and inconsistent with the Commission’s GO 168 and should not be permitted. TURN argues that the Commission should not permit AT&T to modify an underlying enforcement decision through advice letters and that the preexisting disclosure language should be restored to AT&T’s Rule 12 tariff while the issues are pending.⁸ TURN asserts that evidentiary hearings are required to address, among other things, whether AT&T has “implemented specific demonstrable processes and procedures to ensure that the abusive practices do not occur and no harm will befall consumers if the disclosure requirements are modified or eliminated.”⁹ TURN contends that

⁶ Other parties, to the extent that they commented on the issue, asserted only that the Commission should not require other carriers to implement language or requirements in their tariffs to make their tariffs symmetrical with AT&T’s Rule 12 tariff.

⁷ AT&T Phase II comments (March 2, 2007) at 59.

⁸ TURN Phase II comments (March 7, 2007) at 30.

⁹ TURN Phase II comments at 32.

“changed market conditions” are irrelevant to the determination of whether AT&T’s Rule 12 Advice Letter should remain in effect and AT&T should have the burden to prove that it no longer engages in abusive marketing practices.

Modification of D.01-09-058 and Related Orders and Resolutions

The Commission may rescind, alter, or modify a prior decision or order if it has given notice and an opportunity to be heard. Pub. Util. Code § 1708. Pursuant to § 1708, we have given parties notice as to the issues raised by the protests to the AT&T Rule 12 Advice Letters.¹⁰ We provided notice at least two times to the parties that were involved in the underlying complaint case C.98-04-004 that we would be examining the issues raised by the protests to the AT&T Rule 12 Advice Letters,¹¹ including whether the modifications to AT&T’s Rule 12 should stand. We also served all parties that filed protests and the URF service list. Accordingly, all interested parties were given notice that we would be addressing whether effectively to modify D.01-09-058 in this forum. Parties filed comments pursuant to the notice we gave. By this Ruling, we are providing parties further notice and opportunity to be heard through hearings on the issues raised regarding the AT&T advice letters.

Scope of Hearings

We have considered the issues raised by the parties, and tentatively conclude that the following issues fall within the scope of the hearings:

¹⁰ We are addressing and clarifying in a separate decision Ordering Paragraph 21’s intent. Notwithstanding our clarification of Ordering Paragraph 21 on a prospective basis, we are now addressing the specific issues with regard to AT&T’s advice letters in this phase.

¹¹ See Resolution No. L-339, and Assigned Commissioner’s Ruling and Revised Scoping Memo (December 21, 2006).

1. Whether the changed market conditions or any other events subsequent to the issuance of D.01-09-058 (including the findings of the URF Phase I decision) support the modifications made by AT&T's Rule 12 Advice Letters.
2. The relationship between those portions of AT&T's Rule 12 tariff that were modified or removed by the Rule 12 Advice Letters and D.01-09-058 and subsequent decisions or resolutions modifying D.01-09-058.
3. Whether AT&T has reformed its processes and procedures to ensure that the marketing abuses found in C.98-04-004 do not occur.
4. The impact of AT&T's removal of the disclosure language from its Rule 12 tariff on consumers.

Parties should comment on whether they believe this scope of issues should be modified.

Because of the controversial nature of some of the issues raised by the protests to the AT&T Advice Letters, and because these issues have been litigated before the Commission in the past, I intend to prohibit all ex parte communications pertaining to the AT&T Rule 12 Advice Letters. Furthermore, because the issues pertaining to Ordering Paragraph 21 of the URF Phase I decision are somewhat related to the issues raised by the protests to AT&T's Rule 12 Advice Letters, I will extend this ex parte ban to all communications concerning Ordering Paragraph 21.

Burden of Proof

In a typical petition or application to modify an underlying Commission decision or order, the petitioner bears the burden of proof in demonstrating that such changes should be made. Given that AT&T seeks to modify its Rule 12 tariffs by eliminating certain disclosure language resulting from a prior decision, AT&T bears the burden to prove that its Rule 12 Advice Letters should remain in effect.

Scheduling

I tentatively plan to hold evidentiary hearings in October. Parties should comment on the amount of time that they will need for presenting witnesses and evidence. To the extent possible, parties should also indicate the number of witnesses that they intend to produce.

Once I have reviewed and considered the comments on this Ruling, I will issue a Scoping Memo scheduling hearings and timeframes for the filing of testimonies, and addressing any other relevant issues.

Additional Parties

This ruling is being served on the parties protesting Advice Letters 28800 and 28982, all parties in R.05-04-005 (URF proceeding), and all parties in Case 98-04-004 (consolidated complaint case).

IT IS RULED that:

1. Parties who wish to file comments on the scope of issues to be addressed in evidentiary hearings, or the witnesses and amount of time they estimate for hearings, shall do so seven days from the date that this Ruling is mailed. Reply comments will not be permitted.

2. Pursuant to Pub. Util. Code § 1701.1(c)(4) and the Commission's Rules of Practice and Procedure, ex parte communications pertaining to AT&T Rule 12 Advice Letters and Ordering Paragraph 21 of the URF Phase I decision are prohibited.

Dated August 6, 2007, at San Francisco, California.

/s/ RACHELLE B. CHONG

Rachelle B. Chong
Assigned Commissioner

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list (also served on Case 98-04-004).

Upon confirmation of this document's acceptance for filing, I will cause a copy of the Notice of Availability to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the Notice of Availability is current as of today's date.

Dated August 6, 2007, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid